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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 EQUAL EMPLOYMENT
11 OPPORTUNITY COMMISSION,

12 Plaintiff,

13 v.

14 GEORGIA-PACIFIC LLC,

15 Defendant.

Case No. C 07 3944 SBA

**DEFENDANT GEORGIA-PACIFIC LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT**

JURY TRIAL DEMANDED

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17 Defendant Georgia-Pacific LLC ("Defendant"), by and through undersigned counsel, hereby
18 submits its Answer to Plaintiff's Complaint. Plaintiff did not serve a complete copy of the
19 Complaint on Defendant. The copy served appears to be missing page four. Accordingly,
20 Defendant provides this Answer based on the copy of the Complaint served, and does not waive its
21 right to supplement its Answer should it be served with a copy of the missing page four. All
22 allegations not specifically admitted in this Answer are denied. For its Answer to Plaintiff's
23 Complaint, Defendant admits, denies, and alleges as follows:

24 **NATURE OF THE ACTION**

25 Defendant admits that Plaintiff purports to bring this lawsuit pursuant to Title I of the
26 Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991. Nonetheless,
27 Defendant is not the employer of Janet Stege. Defendant denies any unlawful conduct toward Ms.
28 Stege and denies any unlawful employment practices on the basis of disability or at all.

JURISDICTION AND VENUE

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2 1. In response to Paragraph 1 of Plaintiff's Complaint, Defendant admits that this Court
3 appropriately exercises jurisdiction over claims brought pursuant to 42 U.S.C. § 12117, Section
4 107(a) of the Americans with Disabilities Act, but denies that there is specific jurisdiction in this
5 case.

6 2. In response to Paragraph 2 of Plaintiff's Complaint, Defendant denies the allegations
7 of Paragraph 2 except to admit that the State of California, County of Alameda, and City of San
8 Leandro are within the jurisdiction of the Court.

INTRADISTRICT ASSIGNMENT

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10 3. In response to Paragraph 3 of Plaintiff's Complaint, Defendant admits that this action
11 would be appropriate for assignment to San Francisco/Oakland, if there were jurisdiction, which
12 Defendant denies. Defendant further denies that it engaged in any unlawful employment practices.

PARTIES

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14 4. In response to Paragraph 4 of Plaintiff's Complaint, Defendant admits that plaintiff is
15 the agency of the United States of America charged with the administration, interpretation, and
16 enforcement of Title I of the ADA and is expressly authorized to bring civil action by Section 107(a)
17 of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of
18 Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3). Nonetheless, Defendant denies that Plaintiff is
19 expressly authorized to bring this particular action.

20 5. In response to Paragraph 5 of Plaintiff's Complaint, Defendant admits only that it has
21 been a Delaware Limited Liability Company since December 31, 2006, that it has continuously had
22 at least fifteen employees, and that it does business in California. Defendant denies the remaining
23 allegations contained in Paragraph 5 .

24 6. In response to Paragraph 6 of Plaintiff's Complaint, Defendant admits the allegations
25 contained therein.

26 7. In response to Paragraph 7 of Plaintiff's Complaint, Defendant admits the allegations
27 contained therein.

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STATEMENT OF CLAIMS

8. In response to Paragraph 8 of Plaintiff's Complaint, Defendant admits that Ms. Stege filed a charge of discrimination with the EEOC more than thirty days prior to the filing of the Complaint. Defendant denies the remaining allegations contained therein.

9. In response to Paragraph 9 of Plaintiff's Complaint, Defendant denies each and every, all and several, of the allegations contained therein.

10. In response to Paragraph 10 of Plaintiff's Complaint, Defendant denies each and every, all and several, of the allegations contained therein.

11. In response to Paragraph 11 of Plaintiff's Complaint, Defendant denies each and every, all and several, of the allegations contained therein.

12. In response to Paragraph 12 of Plaintiff's Complaint, Defendant denies each and every, all and several, of the allegations contained therein.

PRAAYER FOR RELIEF

In response to Plaintiff's various Prayers for Relief in the Complaint, Defendant denies that Plaintiff or Ms. Stege is entitled to any type of relief, including compensatory damages, punitive damages, or injunctive relief. Defendant observes that the missing page of the Complaint served on Defendant appears to have contained portions of Plaintiff's Prayer for Relief.

DEFENSES

Although Defendant is not the employer of Janet Stege, it asserts the following defenses, in order to preserve them should Plaintiff persist in its claims against an entity not the employer of Janet Stege:

13. Plaintiff has failed to state a claim upon which relief may be granted.

14. Plaintiff's claims for injunctive relief are barred, in whole or in part, because Ms. Stege has not suffered, and will not suffer, irreparable harm as a result of any of the alleged conduct and/or omissions of Defendant, nor is there any other threat of irreparable harm.

15. Plaintiff's claims are barred from any remedy, or certain remedies, under the doctrine of unclean hands.

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1 16. Plaintiff's claims are barred from any remedy, or certain remedies, under the doctrine
2 of laches.

3 17. Plaintiff's claims are barred from any remedy, or certain remedies, under the doctrine
4 of waiver.

5 18. Plaintiff's claims are barred from any remedy, or certain remedies, under the doctrine
6 of estoppel.

7 20. Plaintiff's claims are barred, in whole or in part, because there is not a substantial
8 likelihood of Plaintiff prevailing on the merits of this action.

9 21. Plaintiff's claims are barred, in whole or in part, because Ms. Stege failed to properly
10 mitigate any damages she may have suffered.

11 22. Plaintiff's claims are barred, in whole or in part, because Ms. Stege failed to properly
12 protect herself against avoidable consequences.

13 23. Plaintiff's claims are subject to the doctrine of after-acquired evidence and as such,
14 any remedy or recovery to which Ms. Stege may be entitled must be denied or reduced accordingly.

15 24. Plaintiff's claims are barred, in whole or in part, by virtue of Ms. Stege's consent.

16 25. Plaintiff's claims are barred, in whole or in part, because Plaintiff and Ms. Stege
17 failed to exhaust their administrative remedies.

18 26. Plaintiff's claims are barred, in whole or in part, because Ms. Stege is not a qualified
19 individual with a disability.

20 27. Plaintiff's claims are barred, in whole or in part, because Ms. Stege failed to engage
21 in an interactive process and failed to propose or discuss accommodations which were reasonable.

22 28. Under 42 U.S.C. § 1981a(a)(3), Ms. Stege is not entitled to damages because her
23 employer demonstrated good faith efforts, in consultation with Ms. Stege, to identify and make a
24 reasonable accommodation that would provide her with an equally effective opportunity and would
25 not cause an undue hardship on the operation of the business.

26 29. Assuming, *arguendo*, Ms. Stege was refused a reasonable accommodation based on
27 her alleged disability, such refusal was not unlawful because Ms. Stege could not be accommodated

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1 without undue hardship to her employer, including but not limited to violating the terms of a
2 collective bargaining agreement.

3 30. Assuming, *arguendo*, Ms. Stege was refused a reasonable accommodation based on
4 her alleged disability, such refusal was not unlawful because such an accommodation could not be
5 provided without fundamentally altering the nature or character of the business establishment and
6 the goods and services provided therein.

7 31. Assuming, *arguendo*, Ms. Stege was refused a reasonable accommodation based on
8 her disability, such refusal was not unlawful because such an accommodation could not be provided
9 without posing a direct threat to the health and safety of Ms. Stege or others in the workplace.

10 32. Assuming, *arguendo*, that discrimination occurred, Defendant did not know, nor
11 should it have known, of the alleged discriminatory conduct.

12 33. Assuming, *arguendo*, that there was a violation of the Americans with Disabilities
13 Act or other violation of law, Plaintiff's claim remains barred, in whole or in part, because even
14 without any said impermissible factor, all employment actions taken by her employer would still
15 have been taken due to lawful, legitimate, non-prohibited, or independent reasons.

16 34. Any emotional harm suffered by Ms. Stege was caused by some entity or person(s)
17 other than Defendant.

18 35. Defendant alleges that all acts taken by Ms. Stege's employer or anyone acting on
19 behalf of that employer were just, fair, privileged, with good cause, in good faith, without malice or
20 intent to discriminate, and for lawful and legitimate, nondiscriminatory reasons. Ms. Stege's
21 employer engaged in good faith efforts to comply with the Americans with Disabilities Act and
22 otherwise acted within the scope of the exceptions to vicarious liability for punitive damages
23 enumerated by the Supreme Court in *Kolstad v. American Dental Association*, 527 U.S. 526 (1999).

24 36. Plaintiff has failed to state facts sufficient to set forth a claim for exemplary or
25 punitive damages under 42 U.S.C. § 1981a(b)(1).

26 37. Under 42 U.S.C. § 1981a(b)(3), Ms. Stege's recovery is limited by the statutory caps
27 on compensatory and punitive damages recoverable in actions arising under the Americans with
28 Disabilities Act.

1 38. Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations,
2 including but not limited to, 42 U.S.C. §§ 2000e *et seq.* and 12117 *et seq.*, or Plaintiff's failure to
3 timely file a civil action under 42 U.S.C. § 2000e-5(f).

4 39. Plaintiff's claims are barred because neither Plaintiff nor Ms. Stege exhausted
5 administrative remedies before filing suit, including but not limited to failure to follow the
6 conciliation process at all, or in good faith.

7 40. Plaintiff's claims are barred, in whole or in part, because it failed to timely issue its
8 determination finding reasonable cause under 42 U.S.C. § 2000e-5(b).

9 41. Plaintiff's claims are barred, in whole or in part, because Ms. Stege failed to timely
10 file a charge with the EEOC under 42 U.S.C. § 2000e-5(e).

11 42. Defendant is not the employer under any theory of Janet Stege.

12 43. Plaintiff's claims are within the exclusive jurisdiction of or are preempted by, in
13 whole or in part, section 301 of the Labor Management Relations Act, 29 U.S.C. §185(a).

14 44. Plaintiff's claims are within the exclusive jurisdiction of the California Workers'
15 Compensation Act.

16 45. Because Plaintiff's Complaint is couched in conclusory and vague terms, and was
17 served in an incomplete form, Defendant cannot fully anticipate all the affirmative defenses that may
18 be applicable to this case. Accordingly, Defendant respectfully reserves the right to amend its
19 Answer to add any applicable defenses revealed during any later proceedings in this case.

20 WHEREFORE, Defendant prays for judgment as follows:

- 21 1. That Plaintiff and Ms. Stege take nothing by reason of the Complaint;
22 2. That judgment be entered on the Complaint in favor of Defendant and against
23 Plaintiff, and that the Complaint be dismissed with prejudice;
24 3. That Defendant be awarded its attorneys' fees and costs of suit incurred herein; and
25 4. For such other and further relief as the Court may deem just and proper.
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1 Dated: October 1, 2007

Respectfully submitted,

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4 Margaret Hart Edwards
5 LITTLER MENDELSON
6 A Professional Corporation
7 Attorneys for Defendant
8 GEORGIA-PACIFIC LLC

9 **JURY TRIAL DEMAND**

10 Georgia-Pacific LLC hereby requests a jury trial on all issues triable by a jury.

11 Respectfully submitted,

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14 Margaret Hart Edwards
15 LITTLER MENDELSON
16 A Professional Corporation
17 Attorneys for Defendant
18 GEORGIA-PACIFIC LLC

16 Firmwide: 83146380.2 053676.1002

PROOF OF SERVICE BY MAIL

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On October 1, 2007, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

DEFENDANT GEORGIA-PACIFIC LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT; JURY TRIAL DEMANDED


in a sealed envelope, postage fully paid, addressed as follows:

William R. Tamayo
David F. Offen-Brown
Linda S. Ordonio-Dixon
Equal Employment Opportunity
Commission
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, California 94106-1260

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 1, 2007, at San Francisco, California.


Antonia M. Bereal-Lee